

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 07-1350

CLIFTON WHITE

APPELLANT

V.

CITY OF LITTLE ROCK

APPELLEE

Opinion Delivered SEPTEMBER 3, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[CR2007-3493]

HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Clifton White was convicted of numerous violations of city ordinances in connection with his ownership of nineteen dogs. A judgment was entered against Mr. White on August 29, 2007, in the Little Rock District Court, Third Division. As a result of the violations, Mr. White received multiple fines.

Mr. White attempted to appeal his convictions to the Pulaski County Circuit Court, and on October 18, 2007, appellee City of Little Rock filed a motion to dismiss the appeal on the basis that the record of the district court proceedings had not been filed with the circuit court within thirty days pursuant to Rule 9 of the Arkansas District Court Rules. The Pulaski County Circuit Court subsequently entered an order dismissing Mr. White's appeal, wherein the circuit court made the following findings:

1. Judgment was entered against White in the Little Rock District Court, Third Division, Numbers E-07-2081-2148, on August 29, 2007;

2. White came to the office of the Little Rock District Court on August 30, 2007, on a different matter and mentioned to the Probation Officer that he would be appealing the Judgment entered by the Court.
3. The Probation Officer informed him that he would need to speak with the Clerk of the Court regarding requesting the record.
4. White did not contact the Clerk that day.
5. The next day, August 31, 2007, White filed an Affidavit stating that he was unsuccessful in contacting the Clerk of the Court.
6. White contacted the Clerk of the Court on October 11, 2007, and requested the record. It was prepared the day he requested the record and White has not returned to collect it.

WHEREFORE, this Court finds that this Court does not have jurisdiction to hear this matter. White did not file a copy of the record in Little Rock District Court, Third Division, Numbers E-07-2081-2148 within thirty days of the entry of Judgment on August 29, 2007. Further White did not demonstrate that he requested a copy of the record and the Clerk of the Little Rock District Court Third Division neglected or failed to prepare a copy of the record within thirty days of the Judgment.

Mr. White now appeals from the circuit court's order of dismissal. We affirm.

The applicable rule is District Court Rule 9, which provides in pertinent part:

(a) *Time for Taking Appeal.* All appeals in civil cases from district courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within 30 days from the date of the entry of judgment. The 30-day period is not extended by a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to amend the court's findings of fact or to make additional findings, or any other motion to vacate, alter or amend the judgment.

(b) *How Taken.* An appeal from a district court to the circuit court shall be taken by filing a record of the proceedings had in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk.

(c) *Unavailability of Record.* When the clerk of the district court, or the court in the absence of a clerk, neglects or refuses to prepare and certify a record for filing in the circuit court, the person desiring an appeal may perfect his appeal on or before the 30th day from the date of the entry of the judgment in the district court by filing an affidavit in the office of the circuit court clerk showing that he has requested the clerk of the district court (or the district court) to prepare and certify the records thereof for purposes of appeal and that the clerk (or the court) has neglected to

prepare and certify such record for purposes of appeal. A copy of such affidavit shall be promptly served upon the clerk of the district court (or the court) and the adverse party.

Although Rule 9(a) refers to civil cases, this rule applies to criminal appeals as well. *Allred v. State*, 310 Ark. 476, 837 S.W.2d 469 (1992). In this appeal, Mr. White acknowledges that the district court record was not filed within thirty days, but argues that the record was unavailable, that the district clerk either refused or failed to prepare the record, and that he perfected his appeal by timely filing an affidavit with the circuit clerk pursuant to Rule 9(c).

The affidavit relied on by Mr. White was filed on August 31, 2007, just two days after the judgment in district court was entered. In Mr. White's affidavit, he averred:

1. On August 29, 2007 I was found guilty in Little Rock Municipal Court, Environmental Division for violation of various ordinances which are attached to this affidavit.
2. I have been unsuccessful in contacting Amanda Robinson, Clerk of the Little Rock Municipal Court, Environmental Division, to obtain a transcript and other information necessary to appeal my case.
3. I am filing my appeal at this time, and prior to the trial will attach all relevant documentation.
4. I am requesting a stay of any action by the Animal Services Manager, Tracy Roark, to take control of the dogs that were seized illegally. My failure to reclaim the dogs and pay the fee that is being requested by the City is no indication that I am relinquishing control of these dogs.
5. One of the purposes for appealing this case is in order that I might obtain due process before any action is taken in an attempt to seize my property is seized [sic].

A hearing was held before the circuit court on the appellee's motion to dismiss Mr. White's appeal. Mr. White testified that after being convicted in municipal court on August 29, 2007, he received a letter from Tracy Roark, the city's animal services manager. According to Mr. White, the letter informed him that if he did not pay his fines and pick up

his dogs by 3:00 p.m. on August 31, 2007, the city was going to take his dogs and do “whatever with them.”

Mr. White stated that he wanted to appeal his convictions and request a stay. On August 30, 2007, he went to the environmental branch of the district court and paid a fine on a different case to probation officer John Fink. At that time, appellant told Mr. Fink that he wanted to appeal this matter, and according to appellant Mr. Fink wrote down the case number and left a note on the desk of the court clerk, Amanda Robinson, indicating that Mr. White was appealing the case. On the following day, August 31, 2007, Mr. White called the district clerk’s office and, according to him, he left a message on the answering machine requesting a transcript and stating that he wanted to file an appeal.

Mr. White testified that due to the urgency of the case and the fact that the transcript could not be filed before 3:00 p.m. on August 31, 2007, he went to the circuit clerk’s office that afternoon and filed his affidavit. While there, he spoke with an employee, Kim Mitteer, who called the district court and asked to be transferred to the environmental division. After her telephone conversation with a woman at the district court, Ms. Mitteer told Mr. White that his transcript would be ready the following Monday, on September 3, 2007. However the transcript was not filed with the circuit court that day. Mr. White maintained that after that he unsuccessfully tried to contact Ms. Robinson once by telephone and twice by going in person to the district clerk’s office, all of which occurred within thirty days of the district court judgment. Mr. White was told that Ms. Robinson was the person responsible for

preparing the transcript, and testified that the failure of preparation of the transcript prevented him from perfecting his appeal in that manner.

On cross-examination, Mr. White acknowledged that he has been involved in twenty or thirty cases in the environmental court. He stated that he has been convicted in four or five cases and has appealed them.

Mr. Fink testified about the conversation he had with the appellant at the district court on August 30, 2007. Mr. Fink acknowledged that after appellant paid the fine in an unrelated case, appellant advised him that he wanted to file an appeal with regard to the present case. Mr. Fink stated that he has nothing to do with preparation of the record, and that he told Mr. White that Mr. White would have to contact Amanda Robinson if he wanted to appeal. Mr. Fink could not recall leaving a note for Ms. Robinson as indicated by Mr. White.

Ms. Robinson testified that the first time she became aware that Mr. White was requesting an appeal was when she spoke with him on October 11, 2007. Ms. Robinson completed the transcript later that day. Before then, Ms. Robinson was aware that Mr. White had stopped by the district clerk's office and had left general telephone messages asking her to call him. However, she maintained that she was never made aware of any intention to file an appeal. Ms. Robinson called appellant back on two occasions, but could not reach him and he did not return her calls. Ms. Robinson did not recall receiving any written note from Mr. Fink. Ms. Robinson also swore out an affidavit stating that the only request for an appeal she received from Mr. White was on October 11, 2007, and that she was never served with Mr. White's affidavit that he filed with the circuit clerk on August 31, 2007.

Ms. Mitteer testified that when appellant came to the circuit clerk's office on August 31, 2007, she was advised that he wanted to appeal. As a courtesy, Ms. Mitteer made a telephone call to the district court and asked to be transferred to the environmental division. Ms. Mitteer spoke with an unidentified woman and advised of Mr. White's desire to appeal, but did not give the woman the number of the case. Ms. Mitteer was advised that the transcript would be ready to be picked up the following Monday. After that did not happen, Mr. White returned to the circuit clerk's office a couple of times, and Ms. Mitteer told him that they still needed the transcript.

Mr. White argues in this appeal that the circuit court erred in dismissing his appeal from district court because his appeal was perfected when he filed his affidavit on August 31, 2007. He asserts that this affidavit requesting an appeal was the only means by which he could prevent the city from euthanizing his dogs. Mr. White contends that despite his repeated efforts, the district court clerk steadfastly either refused or neglected to prepare the record. Mr. White complains that because Ms. Robinson was never available in the office when he requested the record, she was effectively "absent" under the terms of Rule 9(c), and he was left with no remedy but to file his affidavit pursuant to the directions provided in that subsection of the rule. Mr. White contends that because he complied with Rule 9(c), this case should be reversed and remanded for a trial in circuit court.

The provisions of District Court Rule 9 are mandatory and jurisdictional. *J&M Mobile Homes, Inc. v. Hampton*, 347 Ark. 126, 60 S.W.3d 481 (2001). Moreover, our cases require strict compliance with Rule 9. *Id.*; see *Baldwin v. State*, 74 Ark. App. 69, 45 S.W.3d 412

(2001) (specifically rejecting a “substantial compliance” approach to appeals from inferior courts). Thus, under the rule, the appellant has the burden of requesting the clerk to prepare and certify the record of the district court proceedings; the appellant is also charged with the responsibility of filing said record in the office of the circuit clerk. *Pace v. Castleberry*, 68 Ark. App. 342, 7 S.W.3d 347 (1999). Alternatively, the appellant must file an affidavit in the office of the circuit clerk showing that he has requested the clerk of the district court to prepare and certify the record for purposes of appeal and that the clerk has neglected to prepare and certify such record. *Id.* Failure to do so precludes the circuit court from having jurisdiction over the appeal. *Id.*

Based on our review of this record, we conclude that the circuit court properly dismissed Mr. White’s appeal because he failed to strictly comply with Rule 9. It is undisputed that the record was not filed with the circuit court within thirty days, so it is necessary to determine the sufficiency of Mr. White’s affidavit. The affidavit was filed only two days after the district court judgment was entered, so at the time of its filing it could hardly be said that the district court clerk had neglected or refused to prepare the record for timely filing in the circuit court. Moreover, the affidavit itself does not even allege that appellant requested the district clerk to prepare the record, or that the district clerk neglected or refused to prepare the record. This is required under Rule 9(c). *See Pace v. Castleberry, supra.*

This case is unlike *Velek v. State*, 364 Ark. 531, 222 S.W.3d 182 (2006), cited by appellant, where we held that there was compliance with Rule 9 when the appellant’s affidavit

stated that the district clerk “specifically and expressly informed me that she would *not* provide me with the necessary transcript required for an appeal unless and until the \$500 bond was first paid.” (Emphasis in original.) Under those circumstances, it was clear from the appellant’s affidavit that the clerk refused to prepare or certify the record, even though those exact words were not used. In the present case, Mr. White offered no such language in his affidavit to demonstrate compliance with the rule.

While Mr. White asserts on appeal that the district clerk, Amanda Robinson, received notice of his desire to appeal within thirty days, there was testimony at the hearing to contradict this claim. Mr. Fink did not remember leaving Ms. Robinson any note, but testified that he told Mr. White it was his responsibility to contact her. While Ms. Mitter did speak over the telephone with an unknown district clerk’s office employee, she did not give any case number and it is entirely possible that that employee thought that Mr. White was requesting an appeal from one of his other many convictions in that court. Most notably, Ms. Robinson herself testified that although Mr. White attempted to contact her on several occasions, he never communicated his desire to appeal either in writing or on any of the voice messages he left. The first time he made such a request was on October 11, 2007, well after the thirty-day time limit expired.

With regard to Mr. White’s claim that he was compelled to file his affidavit to save his dogs, we note that at the hearing the city attorney informed the trial court that the dogs were not put to sleep and that Mr. White could have claimed them. But regardless of the disposition of the dogs, it was incumbent on Mr. White to perfect his appeal in strict

compliance with Rule 9. Because he did not, the circuit court lacked jurisdiction and correctly dismissed his appeal.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.